

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

SAFETY REGULATION OF NATURAL)	ADMINISTRATIVE
GAS SERVICE PROVIDED)	ORDER NO. 246
PURSUANT TO KRS 278.485)	

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1. K.R.S 278.485 provides that a citizen of this Commonwealth living within one-half air mile of a pipeline that is gathering natural gas produced in Kentucky, may "tap-on" to this line and receive gas from the producer or pipeline at that company's currently-approved rate. On December 12, 1979, the United States Court of Appeals for the Sixth Circuit ruled that natural gas which is produced in Kentucky and ultimately resold in another state is in interstate commerce from the well-head. ^{1/} The federal court then concluded that the state of Kentucky had no power to require companies selling gas in interstate commerce to also sell gas to Kentucky residents under the provisions of K.R.S. 278.485 since the Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over any sale from an interstate line. However, companies that produce and gather natural gas in Kentucky for ultimate

^{1/}Public Service Commission v. Federal Energy Regulatory Commission, 610 F2d 439 (6th Cir. 1979).

resale in interstate commerce may still serve local Kentucky customers if the company seeks and obtains a certificate from the FERC approving such sales. The Kentucky PSC, however, has no authority to compel such companies to apply for these certificates on behalf of Kentucky residents.

2. While the Sixth Circuit's 1979 decision clearly prevents the state from requiring sales from an interstate line to local Kentucky consumers pursuant to the provisions of K.R.S. 278.485, the federal court ruling did not in any way affect the state of Kentucky's right to enforce its safety regulations applicable to the facilities by which natural gas is delivered to the consuming public. Two United States Supreme Court cases which were cited by the Sixth Circuit in its 1979 opinion confirm this point. In Interstate Natural Gas Company v. Federal Power Commission, 331 U.S. 682, 690 (1947), the Supreme Court discussed Section 1(b) of the Natural Gas Act ^{2/} which exempts from federal regulation all activities that fall within the category of "production and gathering":

"Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention

2/15 U.S.C. Section 717(b).

of Congress to give the States full freedom in these matters." (Emphasis supplied).

Again, in United Gas Improvement Co. v. Continental Oil Co., 381 U.S. 392, 402-403 (1965), the Supreme Court further elaborated on this point:

"We conclude that even though a sale of natural gas in interstate commerce occurs before production or gathering is ended, it is nonetheless subject to regulation. In the context of such a sale, *** the 'production or gathering' exemption relates to the physical activities, processes and facilities of production or gathering, but not to sales of the kind affirmatively subjected to Commission jurisdiction. This accommodation of the two relevant clauses of Section 1(b) gives content to the national objectives of the Natural Gas Act *** while in no way interfering with state regulatory power over the physical process of production or gathering in furtherance of conservation or other legitimate state concerns." (Emphasis supplied).

These principles were succinctly summarized in a recent opinion of the United States Court of Appeals for the Fifth Circuit in Shell Oil Company v. F.E.R.C., 556 F2d 536 (5th Cir. 1978). Therein the court reviewed the existing case law interpreting the production and gathering exemption of the Natural Gas Act, and concluded (Id., 540):

"No case has been found, however, that extends FERC jurisdiction directly

into the physical activities, processes, and facilities of production and development." (Emphasis supplied).

3. These federal court cases clearly establish that a state may lawfully regulate the facilities by which natural gas is delivered to customers within the boundaries of that state. Such regulation has its purpose in insuring that an inherently dangerous commodity such as natural gas is delivered in a safe manner to the consuming public. Such safety considerations are clearly a matter of "legitimate local concern" as defined by the Supreme Court of the United States, and may be enforced by the state regardless of whether or not the actual sale of the gas is subject to federal or state jurisdiction.

WHEREFORE, for all of the reasons set forth above, the Public Service Commission of Kentucky hereby serves notice to all companies that are delivering natural gas to citizens of this state (regardless of whether or not such deliveries are made pursuant to state or federal authority) that the facilities by which such sales are made to ultimate consumers must comply with this Commission's safety regulations as set forth as follows:

807 KAR 5:006E, Section 1 through 24 ^{3/}

807 KAR 5:021E, Section 1 through 21 ^{4/}

^{3/}Where applicable.

^{4/}Excluding Sections 7, 8, 9, 10, 11, 13, 15, 16, 17, and 18. [See 807 KAR 5:021 E, Section 2(2)].

These safety regulations shall apply to all existing taps on an interstate line regardless of whether or not such taps have been certificated by the FERC pursuant to Section 7(a) of the Natural Gas Act, 15 U.S.C. Sect. 717f(a).

Done this 21st day of May, 1981, at Frankfort, Kentucky.

PUBLIC SERVICE COMMISSION

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Vice Chairman

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Commissioner

ATTEST:

Secretary